

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 12-PM-14731-RAP (S195909)
)	
RUSSELL ROBERT RUIZ)	ORDER GRANTING MOTION TO
)	REVOKE PROBATION; DISCIPLINE
Member No. 123414)	RECOMMENDATION; INVOLUNTARY
)	INACTIVE ENROLLMENT ORDER.
<u>A Member of the State Bar.</u>)	

ORDER REGARDING FILING PORTIONS OF PROBATION REVOCATION MOTION

UNDER SEAL

On June 25, 2012, the Office of Probation filed a motion to file portions of its motion to revoke probation under seal pursuant to rules 5.12(B) and 5.388, Rules Proc. State Bar.¹ No response was filed to the motion.

Having considered the request, the motion is **GRANTED IN PART**. Only the following items are to be redacted or filed under seal, as appropriate, and sealed or redacted, as appropriate, in the court's file and the State Bar's website:²

1. Pages 2:8 through 19; 4:14 through 25; and 9:13 through 24, each beginning with "According to his participation plan...";

2. Pages 10:14 through 11:2;

¹ Future references to rule are to this source.

² All references are to the motion to revoke probation and its exhibits unless otherwise indicated.

3. Exhibit 3, page 31;
4. Exhibit 3, pages 34 through 44;

All other requests are deemed **DENIED**.

Moreover, on the court's own motion, **IT IS ORDERED** that respondent Russell Robert Ruiz's Social Security number, referenced at Exhibit 3, page 79 (Multistate Professional Responsibility Examination results), be redacted in the interests of privacy.³

Accordingly, the aforementioned items must be redacted or kept under seal by the State Bar Court, as appropriate, and marked and maintained by other custodians in a manner calculated to prevent improper disclosure. (Rule 5.12(C).)

IT IS ALSO ORDERED that, unless otherwise ordered, this protected material may only be disclosed to the parties set forth in rule 5.12(D).

IT IS FURTHER ORDERED that persons to whom this protected material is disclosed must be given a copy of this order sealing or redacting a portion of the record in this proceeding by the person making the disclosure. (Rule 5.12(E).)

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Respondent Russell Robert Ruiz participated in this proceeding solely by filing a response indicating no opposition to the motion to revoke probation.

On November 2, 2011, the California Supreme Court filed an order, S195909, accepting the State Bar Court's discipline recommendation, including specified probation conditions, in case nos. 06-C-10938; 06-C-11580; and 06-C-11581. It became effective on December 2, 2011

³ The Office of Probation may wish to consider redacting this type of information before submission to the court in a public proceeding.

(Rule 9.18(a), California Rules of Court) and was properly served on respondent.⁴ A copy of the State Bar Court's decision had previously been properly served on respondent on June 23, 2011.

On November 21, 2011, January 26, 2012 and April 20, 2012, the Office of Probation sent respondent reminder letters regarding the probation conditions, among other things, at his official address. The Office of Probation and respondent had contact by email and telephone during this time as well.

The court finds by a preponderance of the evidence pursuant to Business and Professions Code section 6093, subdivisions (b) and (c) and rule 5.311⁵ that respondent did not comply with the following probation condition:

“Respondent must comply with all provisions and conditions of his Participation Agreement with the Lawyer Assistance Program (LAP) and must provide the Office of Probation with certification of completion of the LAP. Respondent must immediately report any non-compliance with any provision(s) or condition(s) of his Participation Agreement to the Office of Probation. Respondent must provide an appropriate waiver authorizing the LAP to provide the Office of Probation and this court with information regarding the terms and conditions of respondent's participation in the LAP and his compliance or non-compliance with LAP requirements. Revocation of the written waiver for release of LAP information is a violation of the condition. Respondent will be relieved of this condition upon providing to the Office of Probation satisfactory certification of completion of the LAP.”

Respondent has not complied with this probation condition in that he did not provide proof of compliance with LAP with his April 10, 2012 quarterly report because he withdrew

⁴In the absence of evidence to the contrary, the court finds that the Clerk of the Supreme Court performed his or her duty by transmitting a copy of the Supreme Court's order to respondent immediately after its filing. (Rule 8.532(a), Cal. Rules of Court; Evid. C. §664; *In Re Linda D.* (1970) 3 Cal.App.3d 567, 571.)

⁵ Future references to section are to the Business and Professions Code.

from LAP as of January 11, 2012. He has not provided proof of completion of LAP to the Office of Probation.

AGGRAVATING AND MITIGATING FACTORS

Respondent has two prior records of discipline which included, among other things, most recently, three years' stayed suspension and three years' probation subject to conditions, including one year of actual suspension.⁶ (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct,⁷ std. 1.2(b)(i).) In S195909, respondent and the State Bar stipulated to misconduct consisting of respondent's convictions, between 2004 and 2006, of eight criminal charges, including making annoying/obscene telephone calls; driving under the influence of alcohol (DUI) (two convictions); two felony counts of corporal injury to a spouse; disobeying a domestic relations court order; public intoxication; and driving while suspended for a prior DUI conviction. The facts and circumstances surrounding these matters did not involve moral turpitude but did involve other misconduct warranting discipline. The parties stipulated to aggravating factors including multiple acts and a pattern of misconduct, harm and one prior disciplinary record. In mitigation, respondent cooperated with the State Bar during the disciplinary proceedings and successfully completed the State Bar Court's Alternative Discipline Program (which included successful participation in LAP).

A public reproof, including two years of conditions, was imposed on respondent effective March 7, 1997 based upon his felony DUI conviction, later reduced to a misdemeanor.⁸ Respondent had four prior misdemeanor DUI convictions in seven years and five such

⁶ Credit toward the period of actual suspension was given for the period of interim suspension which commenced on February 5, 2007 and ended on April 11, 2008.

⁷ Future references to standard or std. are to this source.

⁸ The court judicially notices the prior disciplinary records as requested.

convictions in 12 years. In mitigation, respondent had no prior discipline and was candid and cooperative.

Respondent significantly harmed the administration of justice as his noncompliance with the probation conditions made it more difficult for the State Bar to appropriately monitor him in seeking to insure the protection of the public and the courts. (Std. 1.2(b)(iv).)

It is respondent's burden to establish mitigating factors, but none were presented.

DISCUSSION

The extent of the discipline to recommend is dependent, in part, on the seriousness of the probation violation and respondent's recognition of the misconduct and the efforts to comply with the conditions. (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 540.) Having considered these factors, the court believes that actual suspension for three years and until respondent complies with standard 1.4(c)(ii) is sufficient to protect the public in this instance. Respondent was aware of the terms and conditions of his disciplinary probation, yet did not comply with them despite reminders from Office of Probation. Accordingly, the motion to revoke probation is GRANTED.

DISCIPLINE RECOMMENDATION

The court recommends that the probation of respondent Russell Robert Ruiz, previously ordered in Supreme Court case matter S195909 (State Bar Court case nos. 06-C-10938; 06-C-11580; and 06-C-11581), be revoked; that the previous stay of execution of the suspension be lifted, and that respondent is suspended from the practice of law for a minimum of three years, and that he will remain suspended until the following requirement is satisfied:⁹

- i. He must provide proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law before the suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.4(c)(ii).)

⁹ This level of discipline is consistent with rule 5.312, Rules Proc. of State Bar.

It is also recommended that the Supreme Court order respondent to comply with rule 9.20(a) of the California Rules of Court within 30 calendar days after the effective date of the Supreme Court order in the present proceeding and to file the affidavit provided for in rule 9.20(c) within 40 calendar days after the effective date of the order showing respondent's compliance with said order.¹⁰

It is not recommended that respondent be ordered to complete the State Bar's Ethics School and the Multistate Professional Responsibility Examination as he already did so in 2011 in connection with Supreme Court order S195909 (State Bar Court case nos. 06-C-10938; 06-C-11580; and 06-C-11581).

COSTS

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

ORDER REGARDING INACTIVE ENROLLMENT

Respondent is involuntarily enrolled inactive pursuant to Business and Professions Code section 6007, subdivision (d). The requirements of section 6007, subdivision (d)(1) have been met: Respondent was subject to a stayed suspension, was found to have violated probation conditions, and it has been recommended that respondent be actually suspended due to said violations.

IT IS THEREFORE ORDERED that respondent Russell Robert Ruiz be involuntarily enrolled as an inactive member of the State Bar of California pursuant to Business and

¹⁰Respondent is required to file a rule 9.20(c) affidavit even if he has no clients. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 130.)

Professions Code section 6007, subdivision (d). This enrollment shall be effective three days following service of this order.

IT IS ALSO ORDERED that his inactive enrollment be terminated as provided by Business and Professions Code section 6007, subdivision (d)(2).

IT IS RECOMMENDED that respondent's actual suspension in this matter commence as of the date of his inactive enrollment pursuant to this order. (Business and Professions Code section 6007, subdivision (d)(3).)

Dated: August 28, 2012

RICHARD A. PLATEL
Judge of the State Bar Court